

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF THE VIRGIN ISLANDS

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	No. _____
v.)	
)	
ESSO STANDARD OIL COMPANY S.A. LTD.,)	
_____)	

COMPLAINT

The United States of America, by authority of the Attorney General and acting at the request of the Administrator of the Environmental Protection Agency ("EPA"), alleges:

NATURE OF THE ACTION

1. This is a civil action brought under Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9607(a), regarding the Tutu Wellfield Superfund Site ("Site") in Anna's Retreat, St. Thomas, U.S. Virgin Islands. Plaintiff, the United States, seeks payment from Defendant ESSO Standard Oil Company S.A. Ltd. ("Esso") of costs incurred or to be incurred by the United States for response actions regarding the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action and over the parties pursuant to 42 U.S.C. § 9613(b), and 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391 and 1395, and 42 U.S.C. § 9613(b), because the claims arose in this district and the release or threatened release of hazardous substances occurred in this district.

DEFENDANT

4. Defendant Esso is a corporation organized under the laws of the Bahamas and doing business in the U.S. Virgin Islands.

5. At all times relevant to this matter, Defendant has been the owner and operator of the Esso Tutu service station, a gasoline and automobile repair station located at 384 Anna's Retreat, State Road 38, St. Thomas, U.S. Virgin Islands.

THE STATUTORY SCHEME

6. CERCLA was enacted in 1980 to provide a comprehensive governmental mechanism for abating releases and threatened releases of hazardous substances and other pollutants and contaminants and for funding the costs of such abatement and related enforcement activities, which are known as "response actions." 42 U.S.C. §§ 9604(a), 9601(25).

7. Under Section 104(a)(1) of CERCLA, 42 U.S.C. § 9604(a)(1):

Whenever (A) any hazardous substance is released or there is a substantial threat of such a release into the environment, or (B) there is a release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare, the President is authorized to act, consistent with the national contingency plan, to remove or arrange for the removal of, and provide for remedial action relating to such hazardous substance, pollutant, or contaminant at any time (including its removal from any contaminated natural resource), or take any other response measure consistent with the

national contingency plan which the President deems necessary to protect the public health or welfare or the environment . . .

8. For CERCLA response actions and enforcement purposes, the Administrator of EPA is the President's delegate, as provided in operative Executive Orders, and, within certain limits, the Regional Administrators of EPA have been re-delegated this authority.

9. Under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a):

(1) [T]he owner and operator of a . . . facility, and (2) any person who at the time of disposal of any hazardous substances owned or operated a . . . facility at which such hazardous substances were disposed of . . . shall be liable for – (A) all costs of removal or remedial action incurred by the United States Government or a State . . . not inconsistent with the national contingency plan; . . .

THE SITE AND RESPONSE ACTIONS

10. The Site is located in the east-central portion of St. Thomas, U.S. Virgin Islands. The Site is located above the Tutu groundwater aquifer, the primary source of drinking water for the island. The Tutu groundwater aquifer is contaminated with hazardous substances within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14) ("hazardous substances"). The Site is roughly defined by the areas in which the Tutu groundwater aquifer is contaminated with hazardous substances.

11. Prior to 1987, there were several major commercial wells located at the Site that were used for the public drinking water supply. In, 1987, EPA tested some of the drinking water wells at the Site and discovered that they were contaminated with

hazardous substances. The Virgin Islands Department of Planning and Natural Resources immediately ordered that several of the drinking water wells be shut down.

12. Esso has disposed of hazardous substances at its service station. The soils at, and groundwater beneath the Esso service station are contaminated with hazardous substances. The Esso service station is a part of the Site.

13. EPA listed the Site on the National Priorities List ("NPL") in September 1995. The NPL was established pursuant to Section 105(a) of CERCLA, 42 U.S.C. § 9605(a), and is found at 40 C.F.R. Part 300, Appendix B. The NPL is a list of those sites at which there are releases of hazardous substances, and which EPA has ranked as having the highest priority for remediation or other response action.

14. In 1988, EPA implemented a response action at the Site that included cleaning contaminated cisterns, disconnecting the contaminated drinking water wells, and the providing of uncontaminated drinking water to the cisterns by tank truck.

15. On August 5, 1996, EPA issued a Record of Decision selecting the remedial action for the Site. The remedy included, among other things, *in situ* soil vapor extraction to address the contaminated soils, and construction and operation of pumping and treatment systems to address the contaminated groundwater.

16. Esso is implementing portions of the selected remedy that relate to the Esso service station. EPA is conducting oversight of Esso's implementation of the remedy at its service station. EPA also is implementing portions of the selected remedy at the Site, other than at the Esso service station.

17. To date, EPA has incurred at least \$11.9 million in conducting various response actions at the Site. EPA is continuing to conduct response actions at the Site, including operation and maintenance of a soil vapor extraction system and of groundwater pump and treat systems. EPA anticipates that it will continue to incur response costs in the future.

GENERAL ALLEGATIONS

18. Esso is a person within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).¹²⁴

19. The Site, including the Esso service station, is a facility within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. There have been and will continue to be releases, within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), and threatened releases, of hazardous substances at or from the Site.

CLAIM FOR RELIEF: COST RECOVERY

21. Paragraphs 1 through 20 are incorporated herein by reference.

22. Esso is liable to the United States pursuant to Section 107(a)(1) and (2) of CERCLA, 42 U.S.C. § 9607(a)(1) and (2), as the current owner and operator of the Esso service station and as the owner and operator at the time of disposal of hazardous substances there.

23. The United States has incurred and will continue to incur costs of response, within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25), to respond to the releases or threatened releases of hazardous substances at the Site.

24. The United States' response actions regarding the Site are not inconsistent with the National Contingency Plan, 40 C.F.R. Part 300.

25. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Esso is jointly and severally liable to the United States for response costs incurred and to be incurred in connection with the Site.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Order Esso to reimburse the United States for all response costs incurred in connection with the Site, all response costs to be incurred by the United States in the future in connection with the Site, and for all interest accrued on such costs;
2. Grant such other and further relief as the Court deems appropriate.

Respectfully Submitted,

THOMAS L. SANSONETTI
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

MARK A. GALLAGHER
DEANNA J. CHANG
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611

DAVID M. NISSMAN
United States Attorney for the
District of the Virgin Islands
U.S. Department of Justice

ERNEST BATENGA
Assistant United States Attorney
District of the Virgin Islands
U.S. Department of Justice
1108 King St., Suite 201
Christensted, St. Croix, VI 00820

OF COUNSEL:

HECTOR VELEZ
Office of Regional Counsel
U.S. Environmental Protection Agency, Region II
1492 Ponce de Leon Avenue, Suite 417
Santurce, PR 00907-4127